United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 19-0332**
	)	**Issued: July 25, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Spencer, MA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On November 29, 2018 appellant filed a timely appeal from a June 22, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted May 5, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the June 22, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On May 8, 2018 appellant, then a 45-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 5, 2018 his long life vehicle (LLV) was rear-ended while in the performance of duty and that he sustained injury to his right shoulder and neck. He stopped work that on the date of injury and returned to work on May 9, 2018. The employing establishment acknowledged on the reverse side of the claim form that the incident occurred while he was in the performance of duty.

On May 5, 2018 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant's medical treatment. Part B of the form, the attending physician's report, was completed on May 5, 2018 by Allison Betts, a certified physician assistant, who indicated that appellant sustained a right shoulder contusion when he was involved in a motor vehicle accident. She checked the box marked "yes" indicating that the condition had been caused or aggravated by an employment activity. On May 5, 2018 Ms. Betts also completed a duty status report (Form CA-17) and a patient release form indicating that appellant could return to work on May 7, 2018.

In a May 5, 2018 x-ray report of appellant's right shoulder, Dr. Lynn Kim, a diagnostic radiologist, indicated that there was no fracture, but noted mild degenerative changes of the acromioclavicular joint.

In a May 10, 2018 note, Kimberly L. Vetal, a nurse practitioner, indicated that appellant could return to work on May 11, 2018 without restriction.

In a development letter dated May 21, 2018, OWCP explained that reports signed by a physician assistant or nurse practitioner, are not considered medical evidence. It advised appellant of the type of medical evidence necessary to establish his claim and afforded him 30 days to submit the necessary medical evidence.

A copy of a May 5, 2018 emergency medical service report was submitted[3] along with a May 5, 2018 emergency care center provider report from Ms. Betts.

In a May 10, 2018 report, Ms. Vetal noted the history of the May 5, 2018 motor vehicle accident and provided an assessment of right shoulder joint pain and back pain.

By decision dated June 22, 2018, OWCP denied appellant's claim. It accepted that the May 5, 2018 employment incident occurred as alleged, but denied the claim finding that appellant

[3] This report was electronically signed by Stephen Sengebush. His credential cannot be verified.

had not met his burden of proof to establish a right shoulder condition causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[7] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted May 5, 2018 employment incident.

The only report appellant submitted from a physician was the May 5, 2018 x-ray report from Dr. Kim. Although the report was electronically signed by a physician, and diagnosed mild degenerative changes of the acromioclavicular joint, the Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the

[4] *Supra* note 1.

[5] *See C.L.*, Docket No. 18-1732 (issued April 2, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[6] *P.F.*, Docket No. 18-0973 (issued January 22, 2019); *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *See C.L., supra* note 5; *B.F.*, Docket No. 09-0060 (issued March 17, 2009).

[8] *P.F., supra* note 6; *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[9] *C.L., supra* note 5; *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008).

[10] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

diagnosed conditions.[11] Therefore the May 5, 2018 diagnostic report is insufficient to establish appellant's claim.

The remainder of the medical evidence of record was prepared by either a nurse practitioner or a physician assistant. As neither provider is considered a physician as defined under FECA, these reports are of no probative value and are insufficient to establish appellant's claim.[12]

The Board finds that the medical evidence of record does not include a rationalized medical opinion explaining how a diagnosed right shoulder condition was physiologically caused by the accepted employment incident.[13] Appellant has therefore not met his burden of proof to establish his claim.[14]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted May 5, 2018 employment incident.

[11] *See T.S.*, Docket No. 18-0150 (issued April 12, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[12] 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law); 20 C.F.R. § 10.5(t). *See also David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); *K.S.*, Docket No. 18-0954 (issued February 26, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

[13] *See N.S.*, Docket No. 19-0167 (issued June 21, 2019).

[14] On appeal appellant is requesting payment of his medical care costs. The Board notes that the employing establishment issued a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300, 10.304; *see also T.S.*, *supra* note 11; *R.W.*, Docket No. 18-0894 (issued December 4, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board